IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

WP(C).No. 36110 of 2005(W)

PETITIONER:

K.C. LEELA MANIAPPAN,
W/O. LATE A.L. MANIAPPAN, PRAVEENALAYAM,
THIRUVANKULAM P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.T.A.SHAJI
SMT.T.V.NEEMA

RESPONDENTS:
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1. **UNION OF INDIA, REP. BY ITS**
   SECRETARY TO GOVERNMENT OF INDIA,
   MINISTRY OF COMMUNICATIONS, NEW DELHI.

2. **THE CHIEF GENERAL MANAGER,**
   TELECOM, KERALA CIRCLE, TRIVANDRUM.

3. **THE GENERAL MANAGER,**
   TELECOM, KANNUR.

4. **M/S. BHARATH SANCHAR NIGAM LIMITED**
   REPRESENTED BY THE CHIEF GENERAL MANAGER
   TELECOM KERALA CIRCLE, TRIVANDRUM.

BY ADV. SRI.C.S.RAMANATHAN, SC, BSNL
SMT.S.AMBIKA DEVI, ADDL.CGSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.36110/2005 W

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE LETTER NO.A57/OBJ/ICP-II/KSZ DTD. 3/11/1998 ISSUED BY THE 3RD RESPONDENT.

EXT.P2: COPY OF THE LETTER NO.A57/OBJ/ICP-II/KSZ DTD. 8/12/1998 ISSUED BY THE 3RD RESPONDENT.

EXT.P3: COPY OF THE LETTER NO.A57/OBJ/ICP-II/KSZ DTD. 16/12/1998 ISSUED BY THE 3RD RESPONDENT.

EXT.P4: COPY OF THE EXPLANATION DTD. 9/11/98 SUBMITTED BY THE PETITIONER'S HUSBAND BEFORE THE 3RD RESPONDENT.

EXT.P5: COPY OF THE EXPLANATION DTD.11/12/98 SUBMITTED BY THE PETITIONER'S HUSBAND BEFORE THE 3RD RESPONDENT.

EXT.P6: COPY OF THE EXPLANATION DTD. 23/12/98 SUBMITTED BY THE PETITIONER'S HUSBAND BEFORE THE 3RD RESPONDENT.

EXT.P7: COPY OF THE REPRESENTATION DTD. 12/01/1999 SUBMITTED BY THE PETITIONER'S HUSBAND BEFORE THE DGM.

EXT.P8: COPY OF THE MEMO DTD. 15/02/99 ISSUED BY THE 3RD RESPONDENT.

EXT.P9: COPY OF THE ORDER DTD. 25/06/2001 IN O.A.NO.255/1999 OF THE CAT, ERNAKULAM.

EXT.P10: COPY OF THE REFER REPORT DTD. 21/11/00.

EXT.P10(A): COPY OF THE ORDER DTD. 4/01/2001 OF SPECIAL JUDGE, (SPE/CBI)-II.

EXT.P11: COPY OF THE JUDGMENT DTD. 19/01/2005 IN O.P.NO.21770/2001 OF THIS HON'BLE COURT.

EXT.P12: COPY OF THE REPRESENTATION DTD. 5/04/2005 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P13: COPY OF THE ORDER DTD. 6/10/2005 ISSUED BY THE 2ND RESPONDENT.

/TRUE COPY/

P.S.TO JUDGE

KSS

V.GIRI, J.

W.P.(C).No.36110 of 2005 D

Dated this the 11th day of October, 2007.

JUDGMENT

The petitioner's husband Maniappan was a Junior Telecom Officer in the Telecom Department. While he was officiating as the Sub Divisional Engineer at Kasaragod, he was authorised to operate Imprest account towards expenditure to be incurred in the Sub Divisional Office. In respect of such expenditure, the employee had produced a statement of accounts with supporting vouchers. It seems that the entire advance drawn by Maniappan was not duly accounted for and therefore, he was intimated that an amount of Rs.2,07,405/-; Rs.1,01,070/- and Rs.6581/- was disallowed as an expenditure. He was directed to credit the said amount in the imprest account. Steps were taken to realise the amount from the salary which ultimately led to O.A.No.255/99 before the Central Administrative Tribunal, Ernakulam Bench. A reading of Ext.P9 order of the

Central Administrative Tribunal in O.A.No.255/99 would show that Maniappan had taken up a contention that the steps for recovery were illegal. The validity of the directions issued by the Department declining the expenditure and requiring him to credit the amount in the imprest account was also challenged before the Central Administrative Tribunal. By Ext.P9 judgment O.A.No.255/91 was dismissed. Ext.P9 was challenged before this court as O.P.No.21770/01. Maniappan passed away during the pendency of the writ petition and the petitioner and the children were impleaded as legal representatives. A Division Bench of this court did not interfere with the order passed by the Central Administrative Tribunal. O.P.No.21770/01 was disposed of, giving liberty to the petitioners to move the Department for recovery of amount due to them by way of Death cum Retirement Gratuity, in the event of which the respondents were directed to expedite the matter. Thereafter, Ext.P12

representation was filed and this led to Ext.P13 order passed by the BSNL rejecting the representation. It is Ext.P13 which is challenged in this writ petition.

2. A counter affidavit has been filed by BSNL affirming that Ext.P1 to P3 directives were issued to Maniappan finding that certain expenditure which he claimed from the Imprest Account was not allowed and consequently he was asked to make good the deficiency and steps were taken to recover the amount from him. O.A.No.255/99 was filed by the petitioner. The same was dismissed under Ext.P9 judgment. It was practically affirmed by this court in Ext.P11. The balance amount due by way of DCRG which is the amount demanded under Exts.P1 to P3 was apparently released to the petitioners. It was contended that no further amounts can be paid to the petitioners inasmuch as what has been adjusted was a loss caused to the BSNL by Maniappan.

3. The fixation of the liability in Exts.P1 to P3 insofar as Maniappan is concerned, was challenged before the Central Administrative Tribunal in O.A.No.255/99. The said O.A. was dismissed under Ext.P9. Though Ext.P9 was challenged before this court O.P.No.21770/01, this court did not interfere with Ext.P9 order. By Ext.P11 judgment, the petitioner was only permitted to approach the department for payment of any amount by way of DCRG. In effect, therefore, the liability which is fastened on Maniappan as per Exts.P1 to P3, though challenged before the Central Administrative Tribunal was not disturbed, nor was the same interfered with by this court in Ext.P11 judgment. In other words, the liability which was incurred by Maniappan as regards the amount mentioned in Exts.P1 to P3 was not interfered with either by the Central Administrative Tribunal or by this court. In such circumstances, the petitioner is entitled to any sum by way of DCRG deducting the

amount covered by Exts.P1 to P3.

4. Mr.Shaji contends that nevertheless there is no adjudication as such of the liability of Maniappan by any court Ext.P10 will show that CBI had investigated a crime against Maniappan and others. They were not able to show any misappropriation on the part of Maniappan. Mr.Shaji submits that notwithstanding Exts.P1 to P3, P9, P11, the BSNL may sympathetically consider the case of the petitioners. It may also be considered whether the loss which has been caused by Maniappan has been recouped from any other source. This aspect of the matter was not considered by the Central Administrative Tribunal, alleges the counsel.

In the circumstances, while I do not find any ground to interfere with Ext.P13, I make it clear that if the petitioner approaches the BSNL for a disbursal of the DCRG, pointing out any change in the circumstances or if the BSNL has recouped the loss caused by Maniappan from any

other source, the BSNL may reconsider the question of payment of amount by way of DCRG untrammeled by the observations contained in this judgment.

Sd/-

(V.GIRI)
JUDGE

sk/

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